



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 7659-22

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion (AO) of 5 January 2023

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and change his narrative reason for separation, separation type, separation code, and reenlistment code in light of current guidelines as reflected in reference (b). He also requested that his awards be updated. Enclosures (2) and (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 February 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include reference (b) through (e). Additionally, the Board considered enclosure (4), an AO from a qualified mental health professional along with Petitioner's response to the AO.

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3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy, except the portion of his request that pertains to an update to his awards record. Petitioner is directed to submit this portion of his request to Headquarters Marine Corps for review and adjudication.

b. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the United States Marine Corps and commenced active duty on 17 July 2000. After completing his initial enlistment honorably, Petitioner immediately reenlisted.

d. On 6 March 2012, Petitioner pled guilty at Summary Court Martial (SCM) to violating Uniform Code of Military Justice Article 92, for failure to obey order, and Article 134, for conduct prejudicial to good order and discipline, related to an unduly familiar relationship that he maintained with a junior Marine. He was awarded a reduction in rank to E-5 and forfeitures of pay.

e. On 24 April 2012, Petitioner's command initiated administrative separation proceedings by reason of commission of a serious offense with a General (Under Honorable Conditions) (GEN) characterization of service. However, as part of a pre-trial agreement (PTA) signed by the Petitioner on 29 February 2012, he agreed to waive his right to an administrative separation board and receive an Other Than Honorable (OTH) characterization of service in exchange for reducing his Special Court Martial (SPCM) charges down to a SCM. Based on the PTA, the command re-notified the Petitioner, on 27 April 2012, placing him on notice that he would be separated with an OTH vice a GEN discharge.

f. On 24 April 2012, Petitioner was medically evaluated by a mental health professional prior to his separation from service. The provider noted "[n]o evidence of clinical PTSD for military purposes at this time. Recommend M/H [mental health] follow-up for other issues related to stress/anxiety." Petitioner states that feeling numb or detached from others is "not related to military/deployment exposure"

g. On 23 May 2012, the Staff Judge Advocate determined that the administrative separation proceedings were sufficient in law and fact to support administrative discharge. On 1 June 2012, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of commission of a serious offense, and assigned an RE-4 reenlistment code.

h. On 30 June 2022, the Navy Discharge Review Board (NDRB) notified Petitioner that his request to upgrade his characterization of service was approved. The NDRB concluded that Petitioner's conduct generally met acceptable standards and conduct, and felt that an upgrade from OTH to GEN was warranted in his case because of the unclear manner in which the

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command handled the separation processing. The NDRB determined that no other changes were warranted and no other arguments were accepted.

i. In support of his petition to this Board, Petitioner submitted a personal statement, statement by junior Marine with whom he had been involved with, peer-reviewed article on depression and attachment styles, pictures from 2005 deployment, post-service evaluations, character references, in-service accomplishments, psychotherapy intake note from [REDACTED] dated February 2018 which indicated the Petitioner was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and VA disability rating letter indicating 60% service connection.

j. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued enclosure (4). The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided one post-service note from [REDACTED]" and a VA Disability rating letter which does not specify what conditions he has been rated for. Failure to obey a lawful order and adultery are not common behaviors that would ordinarily be associated with or necessarily caused by PTSD.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is evidence of a post-service mental health condition. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

k. Petitioner responded to the AO by refuting the analysis of the BCNR Physician Advisor and providing additional arguments based on the language of the Manual for Courts Martial.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner's request merits partial relief.

After review of Petitioner's official military personnel file (OMPF), the Board determined that Petitioner's DD Form 214 contains an administrative error. Specifically, the Board noted Petitioner has a period of honorable service from 17 July 2000 to 3 March 2008, which is not reflected on his separation document. Applicable regulations authorize the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization of "Honorable," as is the case at present. In this regard, the Board determined Petitioner's naval record shall be corrected to reflect his continuous honorable active service for the above referenced period.

In regard to Petitioner's request for an upgrade of his characterization of service and change to the basis for his separation, the Board carefully considered all potentially mitigating factors to

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determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). The Board applied liberal consideration to determine whether relief is

warranted. In this regard, the Board did not believe that relief is warranted under the totality of the circumstances. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded that his misconduct showed a complete disregard for military rules and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command.

In making this determination, the Board concurred with the advisory opinion that there was no evidence that Petitioner suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of his discharge. During the medical evaluation on 24 April 2012, the provider noted "[n]o evidence of clinical PTSD for military purposes at this time." Throughout his disciplinary processing, he never raised concerns of mental health symptoms that would have resulted in mental health referral. Petitioner's post-service evidence of mental health conditions are temporally remote, and the Board found it difficult to attribute his misconduct to a mental health condition. After thorough review of the evidence, the Board concluded that Petitioner's misconduct was not due to mental health-related symptoms, rather, that his active duty misconduct was intentional and willful and demonstrated that he was unfit for further service. As a result, the Board determined that NDRB already granted Petitioner clemency by upgrading his characterization from OTH to GEN, and that no additional relief, aside from the error noted above, was warranted in this case.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action:

Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "17 July 2000 to 3 March 2008".

That no further changes be made to Petitioner's record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

3/2/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]